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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF

**ADMINISTRATIVE MOTION TO FILE
UNDER SEAL CONFIDENTIAL
INFORMATION IN CISCO'S REPLY IN
SUPPORT OF ITS MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Judge: Hon. Beth Labson Freeman

02099-00004/8183045.2

ADMINISTRATIVE MOTION TO FILE UNDER SEAL CONFIDENTIAL INFORMATION IN
CISCO'S REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT
Case No. 5:14-cv-05344-BLF

Pursuant to Civil Local Rules 7-11 and 79-5, Cisco Systems, Inc. (“Cisco”) hereby brings this administrative motion for an order to seal certain information filed in connection with Cisco’s Reply in Support of its Motion for Partial Summary Judgment.

I. LEGAL STANDARD FOR SEALED MATERIALS IN CONNECTION WITH A DISPOSITIVE MOTION

This Court has previously explained the standards for filing under seal materials in connection with a dispositive motion, such as a motion for summary judgment. “Unless a particular court record is one ‘traditionally kept secret,’” a “strong presumption in favor of access” to judicial records “is the starting point.” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.2006) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir.2003)). A party seeking to seal judicial records relating to a dispositive motion therefore bears the burden of overcoming this presumption by articulating “compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure.” *Id.* at 1178–79. Compelling reasons for sealing court files generally exist when such “‘court files might have become a vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Id.* (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). However, “[t]he mere fact that the production of records may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records.” *Kamakana*, 447 F.3d at 1179.

Furthermore, in this District, parties seeking to seal judicial records must also follow Civil L.R. 79–5, which requires, *inter alia*, that a sealing request be “narrowly tailored to seek sealing only of sealable material.” Civil L.R. 79–5(b). Where the submitting party seeks to file under seal a document designated confidential by another party (the “designating party”), the burden of articulating compelling reasons for sealing is placed on the designating party. *Id.* 79–5(e). *Cowan v. GE Capital Retail Bank*, No. 13–cv–03935–BLF, 2015 WL 1324848, at *1 (N.D. Cal. Mar. 24, 2015) (J. Freeman).

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Examples of materials that have been sealed under this standard include :

- Documents relating to the “internal procedures for addressing cardholder fraud notifications” of a bank, *id.* at *2-3;
- Documents containing “information about [a party’s] business performance, structure, and finances that could be used to gain unfair business advantage against them,” *Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016) (J. Freeman);
- Documents containing “highly sensitive information regarding [a party’s] product architecture and development,” *Delphix Corp. v. Actifio, Inc.*, No. 13–cv–04613–BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014) (J. Freeman);
- Documents in the form of “emails containing information about [a party’s] business practices, recruitment efforts, and discussions regarding potential partnerships with other product manufacturers,” *Koninklijke Philips N.V. v. Elec-Tech International Co., Ltd.*, No. 14–cv–02737–BLF, 2015 WL 581574, at *1-2 (N.D. Cal. Dec. 10, 2015) (J. Freeman); and
- Documents containing “information regarding non-public recruitment efforts and business practices” of a party, *id.* at *2-3.

II. DOCUMENTS SOUGHT TO BE SEALED

With its Reply in Support of its Motion for Partial Summary Judgment, Cisco is filing certain materials that were previously designated as confidential by Arista Networks, Inc. (“Arista”). Cisco files this motion to provide Arista the opportunity to file a supporting declaration pursuant to Civil L.R. 79-5(e)(1). Cisco does not claim confidentiality in any of these documents.

The documents, and portions of documents, that Cisco seeks to seal through this motion are included in the chart below:

| Document | Portions to Be Filed Under Seal | Party With Claim of Confidentiality |
|---|---------------------------------|-------------------------------------|
| Cisco's Reply in Support of its Motion for Partial Summary Judgment | Highlighted Portions | Arista |
| Exhibits 1-8 to the Declaration of John M. Neukom in Support of Cisco's Reply in Support of its Motion for Partial Summary Judgment | Entire | Arista |

Dated: July 21, 2016

Respectfully submitted,

/s/ John M. Neukom
John M. Neukom

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